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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,813	07/27/2006	Mitsufumi Wada	1034232-000019	9341

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EXAMINER

LEAVITT, MARIA GOMEZ

ART UNIT	PAPER NUMBER
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1633

NOTIFICATION DATE	DELIVERY MODE
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05/06/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Detailed Action

The reply filed on 02-23-2009 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Original claim 7 drawn to elected subject matter has been amended and claims 8-9 have been cancelled. Elected Group III, original claims 7-9, in the office action mailed on 01-26-2009, is drawn to a **microorganism** in which activity of FAD-dependent D-lactate dehydrogenase (ddl) inherent in the microorganism is inactivated or decreased, activity of pfl is inactivated or decreased, and/or activity of *Escherichia coli*-derived NADH-dependent (ldhA) is enhanced. Note that activity of *Escherichia coli*-derived NADH-dependent (ldhA) is optionally (e.g. and/or) enhanced. Also note, as stated on page 6 of the office action of 01-26-2009, should Applicants elect Group III, a species restriction from the following group is further required under 35 U.S.C. 121 and 372 as set forth below:

I. a **microorganism** in which activity of FAD-dependent D-lactate dehydrogenase (ddl) inherent in the microorganism is inactivated or decreased, activity of pfl is inactivated or decreased, and activity of *Escherichia coli*-derived NADH-dependent (ldhA) is enhanced, and

II. a **microorganism** in which activity of FAD-dependent D-lactate dehydrogenase (ddl) inherent in the microorganism is inactivated or decreased, activity of pfl is inactivated or decreased.

New claim 7 is drawn to a **microorganism** in which activity of FAD-dependent D-lactate dehydrogenase (ddl) inherent in the microorganism is inactivated or decreased, activity of pfl **inherent** in the microorganism is inactivated or decreased, and activity of *Escherichia coli*-derived NADH-dependent (ldhA) **inherent** in the microorganism is enhanced. Hence amended

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claim 7 does not read on the original invention. Thus, there are no claims currently pending that are drawn to the elected subject matter and available for examination. See 37 CFR 1.111. Any further claim amendment must contain at least one claim drawn to the elected invention to be considered responsive. If applicant wishes to pursue a different invention from that elected in this application, the applicant is invited to file a divisional application. Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of **ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Leavitt whose telephone number is 571-272-1085. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1633; Central Fax No. (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the

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problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

/Maria Leavitt/

Maria Leavitt, PhD
Examiner, Art Unit 1633